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December 16, 2002
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: July 29, 2002

Case Number: VSO-0569

This Decision concerns the eligibility of XXXXX (the individual) to hold an access authorization¹ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The individual's access authorization was suspended by the Manager of a Department of Energy (DOE) Operations Office (the Operations Office) pursuant to the provisions of Part 710. Based on the record before me, I am of the opinion that the individual's access authorization should be restored.

I. Background

The individual has been an employee of a contractor at a DOE facility and has held a security clearance since 1978. After a routine reinvestigation of the individual's background revealed concerns about the individual's use of alcohol, the Operations Office conducted a Personnel Security Interview (PSI) with the individual on April 3, 2001. Because the security concern remained unresolved after that PSI, the Operations Office requested that the individual be interviewed by a DOE consultant psychiatrist (DOE psychiatrist). The psychiatrist interviewed the individual on May 1, 2001, and thereafter issued an evaluation to the DOE, in which he opined that the individual suffered from Alcohol Related Disorder, Not Otherwise Specified. The Operations Office ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to the individual. Accordingly, the Operations Office suspended the individual's access authorization, and obtained authority from the Director of the Office of Safeguards and Security to initiate an administrative review proceeding.

¹Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization. The Notification Letter included a statement of that derogatory information and informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual requested a hearing, and the Operations Office forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, a DOE personnel security specialist, and the DOE psychiatrist. Both the individual and the DOE Counsel submitted exhibits. I closed the record upon receiving the transcript of the hearing.

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization. I have also considered the evidence that mitigates that concern. I conclude, based on the evidence before me and for the reasons explained below, that the security concern has been resolved, and that the individual's access authorization should be restored.

II. *Analysis*

A. The Basis for the DOE's Security Concern

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual (1) "is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse;" (2) has "an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in the judgment or reliability" of the individual. *See* 10 C.F.R. § 710.8(h), (j). The statements were based on the individual's history of alcohol use as well as on the diagnosis by the DOE psychiatrist that the individual suffered from Alcohol Related Disorder, Not Otherwise Specified.

The DOE personnel security specialist noted in her testimony that the individual

had indicated that, in the background investigation, . . . that since 1993 and his divorce in '95, that he characterized his drinking of alcohol as two to three beers per night, and a possible drink of whiskey or scotch.

He also indicated that he believed that he drinks too much and that his children and family are not happy about his use of alcohol. And there were several other sources that

we had information from who voiced a concern or else did make comments regarding his use of alcohol.

....

One source indicated that he was aware of conversations with the subject's son, and the subject's son indicated that he felt his father was drinking too much on a daily and weekly basis, and became intoxicated four or five times a year. And the son was expressing some concern about his father's drinking.

Also had an interview that related that the source had seen subject on several (indiscernible) occasions, maybe six or seven times a year, and that the subject was still upset about his divorce. And that he had observed him intoxicated at least 10 times. And he described . . . intoxicated as being in a state of happiness and relaxed.

Transcript of Hearing (Tr.) at 31-32.

After the DOE psychiatrist's May 1, 2001 examination of the individual, the psychiatrist stated that the individual

has a history of drinking that has continued. In my opinion, this has continued to a maladaptive degree. He drinks every day, and he admits to getting "tipsy" once a month. He tried to stop drinking approximately two weeks ago, but so far he has described at least two days wherein he had drinks, but not to the point of intoxication. He does not have enough symptoms or presentations related to alcoholism that can be categorized as alcohol abuse. Hence, the diagnosis is being categorized as Alcohol Related Disorder Not Otherwise Specified.

DOE Exhibit 10 at 7.

All of the concerns in the present case relate to the individual's use of alcohol. Excessive use of alcohol raises a security concern due to the heightened risk that an individual's judgment and reliability will be impaired to the point that he will fail to safeguard classified matter or special nuclear material. *E.g., Personnel Security Hearing, Case No. VSO-0479, 28 DOE ¶ 82,857 (2002).*

B. Whether the Security Concerns Have Been Resolved

A hearing under Part 708 is held "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization," i.e., "to have the substantial doubt regarding eligibility for access authorization resolved." 10 C.F.R. § 710.21(b)(3), (6). "In resolving a question concerning an individual's eligibility for access authorization," I must consider

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R. § 710.7(c).

At the hearing, the DOE psychiatrist testified as follows:

THE HEARING OFFICER: . . . [A]bsent any formal type of counseling, let's say that he determined on his own to not drink to excess in the future, how long would he have to continue that pattern of basically non-maladaptive drinking to be free of this diagnosis?

THE WITNESS: The manual [Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV)], and this refers more so to the more serious alcohol-related disorders, normally, prescribes like a 12-month period. I think that time frame is appropriate also in other instances, like alcohol-related disorder NOS.

. . . .

BY [DOE COUNSEL]:

Q. You mentioned excessive drinking, if there was none in the next year that this would modify his behavior. Are you aware of any specific instances in the past year where he [h]as drunk to excess?

A. In the past year I do not know. This interview that I did was conducted over a year ago.

Q. It was well over a year ago.

Tr. at 75, 78.

Thus, I allowed the DOE psychiatrist to ask the individual a series of questions regarding his use of alcohol since the May 1, 2001 interview. The following are some excerpts from that portion of the individual's testimony:

C "The beer that I grab when I go home and start cooking dinner, it's just a habit. You know, I reach into the ice box, it's my beverage of choice. Lately I keep a pitcher of ice tea at the front, I had ice tea last night and the night before."

- C "[L]ate at night I'll have my nightcap, if you will, in the privacy of my home in front of the TV."
- C "[T]ypically Friday nights and -- I can't say every Friday night, I mean I've been dating a lady friend, we'll go to a local bar, it's within a mile, mile and a half from my home. She'll drive. I'll have -- you know, I don't count them, perhaps four drinks, five drinks in a space of four hours or whatnot. I don't close the bar down, as some do."
- C "Having a drink with dinner, you know, I can certainly substitute the first one. I like my nightcap. It doesn't mean I have to have it, I just, I just enjoy it."
- C "I've given up drinking at lunch at work."

Tr. at 79, 80, 81-82. In addition to describing his recent drinking patterns, the individual stated that he has "ventured to understand" his behavior, and that his life had "become somewhat simpler" and was "getting better, getting better as far as stress and strain." Tr. at 79-80. I then asked the DOE psychiatrist, "in light of what you heard, where does your diagnosis stand as of today?"

THE WITNESS: As of today it looks that he had, you know, modified his use of alcohol from when I saw his last.

THE HEARING OFFICER: So would he still qualify for this Axis I diagnosis [Alcohol Related Disorder, Not Otherwise Specified] under these circumstances?

THE WITNESS: Probably not.

Tr. at 84.

To the extent that the security concerns in this case rested on the individual suffering from a diagnosed "illness or mental condition," 10 C.F.R. § 710.8(h), I find that the concerns have been mitigated by the DOE psychiatrist's testimony that his prior diagnosis no longer applies.

Regarding concerns about the individual being a "user of alcohol habitually to excess," 10 C.F.R. § 710.8(j), that concern has been mitigated to the extent that it relied on the DOE psychiatrist's opinion. However, there can be valid concerns regarding a clearance holder's use of alcohol completely independent of any psychiatric diagnosis. *Personnel Security Review*, Case No. VSA-0281, 27 DOE ¶ 83,030 (April 10, 2000).

In the Notification Letter, the DOE cited the individual's admission that he "drinks daily," "drinks more if he feels stressed," and "gets 'tipsy' once a month." DOE Exhibit 4. The letter also cites the DOE psychiatrist's recounting of his interview with the individual, in which he noted statements by the individual that he "would go out drinking during their lunch break and at times would not return to work" and that he "stopped drinking when he received notice of a psychiatric evaluation," but that

“on the Friday night before the evaluation he consumed wine and the Saturday before the evaluation he had drinks at a fraternity reunion.” *Id.*²

While all of these statements might aid a psychiatrist’s diagnosis, in the absence of such a diagnosis I find that information regarding the individual’s drinking patterns (e.g., why, when, how often) ultimately presents security concerns only if the individual drinks to excess, i.e., becomes impaired to the point that he will fail to safeguard classified matter or special nuclear material. Although it is impossible to predict with absolute certainty an individual’s future behavior, the Part 710 regulations call for me to make a predictive assessment. In this case, the risk is that the individual may drink to excess in the future.

I am optimistic in this case for two reasons. First, the individual has modified his behavior since his May 1, 2001 psychiatric evaluation by abstaining from excessive drinking, such that he no longer qualifies for the diagnosis of Alcohol Related Disorder, Not Otherwise Specified. Second, the individual’s testimony reflected insight and awareness regarding the role alcohol plays in his life. I note that the individual’s use of alcohol has never been problematic enough to merit a diagnosis of alcohol abuse or dependence, and it appears that the individual is making choices to avoid excessive drinking in the future. Thus, I find that the chance of the individual drinking to excess in the future is low enough that what risk it does present is acceptable. For the above-stated reasons, “after consideration of all the relevant information, favorable and unfavorable,” I conclude that restoring the individual’s “access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. §§ 710.7(a), 710.27(a).

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: December 16, 2002

² Regarding drinking at lunch and not returning to work, the individual explained at the hearing that this would take place at off-site office functions where alcohol was being served, and where employees were given the afternoon off to attend (e.g. office picnics, retirement parties). Tr. at 11-14. The individual also explained that he stopped drinking after he received notice of his psychiatric evaluation because he wanted to see if he would suffer classic signs of withdrawal. Tr. at 19-20. He indicated that he noted no such symptoms. *Id.*